

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JASON RATCLIFF,

Plaintiff,

vs.

ERNIE MOORE, *et al.*,

Defendants.

Case No. 1:05-cv-582

Spiegel, J.
Litkovitz, M.J.

**ORDER AND REPORT
AND RECOMMENDATION**

This civil action is before the Court on the motion of plaintiffs Blankenship and Weisheit to proceed with their religious damages claim (Doc. 235), defendants' motion to dismiss (Doc. 248), plaintiffs' response in opposition (Doc. 249), and defendants' reply. (Doc. 250).

Plaintiffs, inmates in the custody of the Ohio Department of Rehabilitation and Correction (ODRC), brought this action pursuant to 42 U.S.C. § 1983, alleging, *inter alia*, a failure to accommodate their Asatru religious practices. (Doc. 13). Plaintiffs include Alfar Kynwufl (formerly known as Darryl Blankenship), Jeff Weisheit, Chris Roy, and Jason Ratcliff. These plaintiffs are also plaintiffs in a previously filed class action – *Miller, et al. v. Wilkinson, et al.*, Case No. 2:98-cv-275 – which was pending in the Eastern Division of this United States District Court. The defendants in the present action, as well as in *Miller*, are prison officials.

In the present case, plaintiffs seek a declaratory judgment, injunctive relief, and monetary recovery. (Doc. 1, pp. 15-21). The Court previously dismissed plaintiffs' Asatru religion claims for injunctive and declaratory relief as duplicative of those raised in the *Miller* class action case. (Doc. 206). The Court further stayed plaintiffs' Asatru religious damages claims pending the disposition of *Miller*. *Id.*

The parties in *Miller* ultimately adopted a stipulation for injunctive relief on April 19, 2010. When the original *Miller* class action case reached the implementation phase, the Court opened a new case to adjudicate any Asatru damages claims. See *Miller v. Wilkinson*, Case No. 2:10-cv-917 (S.D. Ohio filed Oct. 12, 2010). The Court ordered any named plaintiff in *Miller* who seeks damages to file an amended complaint by November 2, 2010. *Id.* at Doc. 2. Plaintiff Blankenship herein is the only plaintiff in *Miller* who has filed or attempted to file such an amended complaint for damages in *Miller*. *Id.* at Doc. 4. The Court further ordered that any inmate who was not a named plaintiff in *Miller* would be required to file a new case. *Id.* at Doc. 2.¹

Plaintiffs Blankenship and Weisheit now seek to adjudicate their Asatru religious damages claims in this action. (Doc. 235). Plaintiffs seek to recover damages under the Religious Land Use and Institutionalized Persons Act (RLUIPA). In November 2010, defendants filed a motion to stay plaintiffs' motion in light of the Supreme Court's grant of certiorari in the matter of *Sossamon v. Texas*, 560 F.3d 316 (5th Cir. 2009), *cert. granted in part*, 130 S.Ct. 3319 (U.S. May 24, 2010) (No. 08-1438). *Sossamon* presented the question of "Whether an individual may sue a State or state official in his official capacity for damages of the Religious Land Use and Institutionalized Persons Act?" *Id.* In the interest of judicial economy, the undersigned granted defendants' motion to stay adjudication of plaintiffs' motion to consider their damages claim pending a ruling by the Supreme Court in *Sossamon*. (Doc. 244). On April 20, 2011, the Supreme Court issued its decision in *Sossamon v. Texas*, -- U.S. --,

¹ Jason Ratcliff and Chris Roy did not file a new complaint as required by the October 12, 2010 order in *Miller*, nor have they joined in plaintiffs Blankenship's and Weisheit's motion to proceed. Consequently, it appears that Mr. Ratcliff and Mr. Roy have abandoned this litigation; however, the instant Report and Recommendation equally applies to all of the named plaintiffs' claims.

131 S.Ct. 1651 (2011). Accordingly, the previously imposed stay is **VACATED** and this matter is ripe for adjudication.

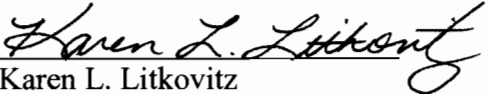
After filing their motion for a stay, defendants filed a motion to dismiss plaintiff Blankenship's and plaintiff Weisheit's religious damages claims. (Doc. 248). Defendants' motion is based on the outcome of *Sossamon*, wherein the Supreme Court held that the doctrine of sovereign immunity bars a suit for monetary damages against the State under the RLUIPA. *Sossamon*, 131 S.Ct. at 1655. Defendants accordingly assert that plaintiffs' RLUIPA damages claim against Ohio state employees is barred. In response, plaintiffs assert that the *Sossamon* ruling is irrelevant as they may still recover under 42 U.S.C § 1983. (Doc. 249). Plaintiffs' argument is not well-taken.

On April 24, 2009, the District Court granted defendants' motion to dismiss plaintiff's claims for declaratory and injunctive relief in this matter (Doc. 206), the result of which was that only two claims remained in the case: plaintiff Blankenship's claim that ODRC policies violated his right of access to legal materials and the plaintiffs' RLUIPA claim. Subsequently, on November 8, 2010, the District Court granted defendants' motion for summary judgment on plaintiff Blankenship's access to legal materials claim. (Doc. 238). Thus, contrary to plaintiffs' assertion that they may recover under § 1983, the only pending issue in this matter since the November 2010 Order has been plaintiffs' RLUIPA claim. In light of the Supreme Court's holding in *Sossamon*, plaintiffs' RLUIPA claims against the state for money damages are barred by the doctrine of sovereign immunity. *Sossamon*, 131 S.Ct. at 1655. Accordingly, defendants' motion to dismiss should be granted.

IT IS HEREBY ORDERED THAT the previously imposed stay of this matter (Doc. 244) is **VACATED** and that plaintiffs' motion to proceed on their damages claims (Doc. 235) is **DENIED** as *moot*.

Further, **IT IS RECOMMENDED THAT** defendants' motion to dismiss (Doc. 248) be **GRANTED** and that this matter be **DISMISSED** on the docket of the Court.

Date: 5/31/12


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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Darryl Blankenship
 #295771
 PO Box 5500
 Chillicothe Corr. Inst.
 Chillicothe, OH 45601

2. Article Number

(Transfer from service label)

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Jeffery Weisheit # A233190
Toledo Corr. Inst.
Pb Box 80033
2001 East Central Avenue
Toledo, OH 43608

2. Article Number

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1. Article Addressed to:

Jason M Rateliff
 #A316227
 Mansfield Corr. Inst.
 PO Box 788
 Mansfield, OH 44901

2. Article Number

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1. Article Addressed to:

Alfar Kynwulf # 295-771
 Chillicothe Corr. Inst.
 PO Box 5500
 Chillicothe, OH 45601

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent
☐ Addressee
B. Received by (*Printed Name*)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
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4. Restricted Delivery? (*Extra Fee*)☐ Yes

2. Article Number

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1. Article Addressed to:

Chris Roy # 348-671
 Lebanon Corr. Inst.
 PO Box 56
 Lebanon, OH 45036

2. Article Number

(Transfer from service label)

7003 2260 0002 6723 4873

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